

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

PAUL DALE WOLFE,)	
#215433,)	
)	
Petitioner,)	
)	
VS.)	CIVIL ACTION NO.
)	2:05-CV-742-D
)	
J.C. GILES, <i>et. al.</i> ,)	
)	
RESPONDENTS.)	

**RESPONDENTS' SECOND SUPPLEMENTAL
ANSWER TO COURT'S ORDER**

Come now Respondents, in this case, by and through the Attorney General of the State of Alabama, and in response to this Court's Order dated November 14, 2005, answer in the following manner.

PROCEDURAL HISTORY

1. Respondents adopt by reference the procedural history provided in their answers previously filed by Respondents on September 27, 2005 and November 2, 2005.

2. On November 3, 2005, Circuit Clerk David S. Nix, of Barbour County, corrected the case action summary sheet in CC-2005-84 and transferred Wolfe's "Rule 32" case to Montgomery County Circuit Court. (Exhibit C-1)

3. On November 15, 2005, the Montgomery County Circuit Clerk's Office docketed Wolfe's Rule 32 petition that was transferred from Barbour County. (Exhibit D) The case was assigned case number CC-03-498.60. (Id.)

ANSWER

1. Respondents deny they have abridged any of Wolfe's rights under the Constitution of the United States or under any federal statute or treaty.

2. Respondents assert Wolfe's claims are barred from federal review because he now has an action pending in the Circuit Court of Montgomery County.

MOTION TO DISMISS

Respondents move this Court to dismiss the present petition. As grounds for this request, Respondents submit the following:

Under Title 28 U.S.C. §2254(b) and (c), the federal courts are mandated from exercising their power under §2254 when a federal habeas petitioner has an effective right and ability to obtain relief from his alleged constitutional errors under the remedies afforded by the state ordering his custody. See also, Walker v. Zant, 693 F.2d 1087, 1087 (11th Cir. 1982). A claim is generally deemed

exhausted when the precise issue presented for habeas review was raised or “fairly presented” to the highest state court. Horowitz v. Wainwright, 709 F.2d 1403, 1404 (11th Cir. 1983). The exhaustion principle extends to actions pending in state court. Prince v. Alabama, 476 F.2d 298, 298 (5th Cir. 1973).

In Prince, the petitioner attempted to attack his conviction via a federal habeas corpus petition, while his direct appeal was pending in state court. The court held §22454(b) and (c) prevented the federal court from addressing Prince’s claims because of his pending state action.

Like the petitioner in Prince, Wolfe’s federal habeas petition is now premature. Wolfe has an action pending in the Circuit Court of Montgomery County. Wolfe’s Rule 32 petition is pending in the Montgomery County Circuit Court. (Exhibit D) No final decision has been reached on Wolfe’s Rule 32 petition. Because Wolfe now has a state action pending that addresses the validity of his conviction and sentence, this Court should refrain from addressing the merits of Wolfe’s claims and dismiss his federal habeas petition accordingly.

CONCLUSION

Based upon the foregoing facts and authorities, Wolfe's federal habeas corpus petition should be dismissed because he has a current action pending in the Montgomery County Circuit Court.

EXHIBITS

C - Transfer notice from Barbour County.

D - Case action summary in CC-03-498.60, from Montgomery County.

Respectfully submitted,

s/Yvonne A. H. Saxon (Sax003)
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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of November, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and I hereby certify that I have mailed by United States Postal Service the document (including exhibits) to the following non-CM/ECF participants: Paul Dale Wolfe, #215433, P. O. Box 767, Clayton, AL 36016.

Respectfully submitted,

s/Yvonne A. H. Saxon (Sax003)
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